

Received.
31-10-2015

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. 16 OF 2015
IN
WRIT PETITION (CIVIL) NO. 494 OF 2012

IN THE MATTER OF:

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

Vs.

Union of India and Ors. ... Respondents

AND IN THE MATTER OF:

The Securities and Exchange Board of India ...Applicant

INDEX

1.	Application for intervention/impleadment on Behalf of Applicant with Affidavit	1 - 8
2.	Annexure-A/1: Copy of the Circular dated Dated 13/08/2012	9
3.	Annexure-A/2: Copy of the circular dated 08/10/2013	10

ADVOCATE FOR THE APPLICANT: MR. HARISH PANDEY

/

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. ____ OF 2015
IN
WRIT PETITION (CIVIL) NO. 494 OF 2012

IN THE MATTER OF:

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

Vs.

Union of India and Ors. ... Respondents

AND IN THE MATTER OF:

The Securities and Exchange Board of India ...Applicant

Through its Manager Legal,

Northern Regional Office

Legal Affairs Department,

Fifth Floor, Bank of Baroda Building,

16, Parliament Street,

New Delhi - 110001.

**APPLICATION FOR INERVENTION/ IMPLEADMENT ON BEHALF OF
THE APPLICANT**

TO

**THE HON'BLE THE CHIEF JUSTICE OF
INDIA AND THE OTHER COMPANION
JUDGES OF THIS HON'BLE COURT**

MOST RESPECTFULLY SHEWETH

1. The Applicant is the Securities and Exchange Board of India, a statutory body established under Section 3 of the Securities and

Exchange Board of India Act, 1992 ("Act") for the purposes of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

2. The Petitioners have filed the present Petition seeking to restrain inter-alia the Respondent No. 1, Union of India from issuing 'Aadhar' numbers by way of implementing an executive order dated 28.01.2009 of the Respondent No. 1. It is the case of the Petitioners that the constitution of the Unique Identification Authority of India [UIDAI] and collection of biometric details of citizens of India by the UIDAI is a violation of the right to privacy, flowing from Article 21 of the Constitution of India. It is also the case of the Petitioner that the right under Article 21 can only be taken away in accordance with the procedure established by law. The Petitioners argue that the reference to law under Article 21 is to law made by the Parliament.
3. Pursuant to establishment of the UIDAI by the Government of India and implementation of the Aadhar scheme further to notification dated January 28, 2009 issued by the Government of India, various instrumentalities of state, including the Applicant, have issued Aadhar acceptance notifications adopting the Aadhar letter as a valid proof of residence/ identity.
4. Similarly, the Applicant issued a circular dated August 13, 2012 under Section 11 of the Act to all concerned stock exchanges, Intermediaries, Mutual Funds, Alternate Investment Funds, Collective Investment Schemes etc. notifying the acceptance of the Aadhaar letter issued by UIDAI to be admissible as 'Proof of

Address' in addition to it presently being recognized as 'Proof of Identity'. It may be noted that Aadhaar was already permitted as valid 'Proof of Identity' and 'Proof of Address' documents in the Know Your Customer ("KYC") procedures for opening of bank accounts, insurance, telecom and many other services. A copy of the circular dated August 13, 2012 is annexed hereto and marked

ANNEXURE A/1. (Page 9)

5. Meanwhile, *vide* order dated September 23, 2013 in the present Petition, this Hon'ble Court directed that:

"All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

6. That *vide* a subsequent circular dated October 08, 2013 issued under Section 11 of the Act, the Applicant informed concerned stock exchanges, Intermediaries, Mutual Funds, Alternate Investment Funds, Collective Investment Schemes etc. that in consultation with UIDAI and the market participants, it has been decided to accept e-KYC service launched by UIDAI also, as a valid process for KYC verification. The information containing relevant client details and photograph made available from UIDAI as a result of e-KYC process shall be treated as sufficient Proof of Identity and Address of the client. However, the client shall have to authorize the intermediary to access his data through UIDAI system. A copy of the circular dated October 08, 2013 is annexed hereto and marked **ANNEXURE A/2. (Pages 10)**

7. That the present Petition was taken up for hearing by this Hon'ble Court on several dates and vide order dated August 11, 2015, this Hon'ble Court was pleased to direct the Registry of this Hon'ble Court to place the matters before the Hon'ble Chief Justice of India for appropriate orders. By an order of even date, this Hon'ble Court was also pleased to direct that:

"Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDA proceed in the following manner:-

- 1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;*
- 2. The production of an Aadhaar card will not be condition for obtaining any benefits otherwise due to a citizen;*
- 3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDS Scheme and in particular for the purpose of distribution of foodgrains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;*
- 4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation."*

8. That aggrieved by the subject matter of the present Petition which seeks restraint on the implementation of the Aadhar, the Applicant is filing the present Application seeking intervention.
9. It is respectfully submitted that the use of Aadhar numbers is contributory to development of securities markets in various ways, inter alia, the following:-

- 5
- i. Aadhaar can act as a single document for both proof of identity and address for an individual. Thus, a single piece of document i.e. Aadhaar offers easy and simplified mode for completion of Know Your Client ('KYC') requirements while on-boarding a client by any registered intermediary in terms of Prevention of Money Laundering norms.
 - ii. Presently 91.63 crores Cumulative Aadhaars have been issued (as gathered from UIDAI website). Considering the wide spatial spread and demographic reach, Aadhaar can act as effective tool for financial inclusion. Using Aadhaar, potential investments can be channelized from masses across small towns and cities.
 - iii. Aadhaar can act as a tool for monitoring various transactions by individuals across financial markets and help in early fraud detection.
10. This also makes it more expedient for the Applicant who is mandated to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market to discharge its functions under the Act in relation to investors and intermediaries. The Applicant accordingly seeks leave to address this Hon'ble Court in respect of the present Petition given the importance of the subject matter especially in relation to the discharge of the duties of the Applicant in the securities market.
11. The Applicant also humbly seeks appropriate clarifications from the Hon'ble Court on the fate of already seeded Aadhar numbers of its KYC, depositories etc. prior to the order dated August 11, 2015 of the Hon'ble Court. The applicant also seeks to ascertain the treatment of a client / investor as compliant or non-compliant whereby the intermediary has performed Client Due Diligence for entering into account based relationship with clients based on the Aadhaar document as proof of identity and proof of address.

6
12. The Applicant accordingly craves the leave of this Hon'ble Court to be impleaded in the present Petition.

13. The present Application is being filed *bonafide* and in the interests of justice.

PRAYER

The Applicant therefore most respectfully prays that this Hon'ble Court may be pleased to:

- (a) direct that the Applicant be impleaded as a party Respondent in the present Writ Petition;
- (b) pass such further and other reliefs, as the nature and circumstances of the case may require.

AND FOR THIS ACT OF KINDNESS, THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY

New Delhi

Date: 24.09.2015

Filed by:

HARISH PANDEY
Advocate for the Applicant

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. ____ OF 2015

IN

WRIT PETITION (CIVIL) NO. 494 OF 2012

IN THE MATTER OF:

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

Vs.

Union of India and Ors. ... Respondents

And in the matter of:

The Securities and Exchange Board of India ...Applicant

AFFIDAVIT

I Vivek Yadav, S/o Puran Singh Yadav, aged about 33 presently working as Manager, Securities and Exchange Board of India, 5th Floor, Bank of Baroda Building, 16 Parliament Street, New Delhi-110001 do hereby solemnly affirm and declare as under:

1. That in my official capacity as mentioned above, I am conversant with the facts of this case and hence competent to swear this affidavit.
2. That contents of accompanying application for intervention / impleadment on behalf SEBI may be read as part of this affidavit and are not repeated herein for the sake of brevity.
3. That the annexures annexed to the application is true copies of their respective originals.

3. That accompanying application for intervention/impleadment on behalf SEBI has been drafted by our counsel on our instructions and contains true statements of facts.


DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the contents of Paras 1 to 3 of this affidavit are true to my knowledge derived from the records maintained by the Applicant in ordinary course, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 24th day of September, 2015


DEPONENT

9

ANNEX-A/1



भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India

CIRCULAR

CIR/MIRSD/ 09 /2012

August 13, 2012

All Recognized Stock Exchanges

Association of Mutual Funds in India (AMFI)

SEBI Registered Intermediaries:

1. KYC Registration Agencies (KRAs),
2. Stock Brokers through Stock Exchanges,
3. Depository Participants (DPs) through Depositories,
4. Mutual Funds (MFs)
5. Portfolio Managers (PMs)
6. Alternative Investment Funds (AIFs)
7. Collective Investment Schemes (CIS)

Dear Sirs,

Subject: Aadhaar Letter as Proof of Address for Know Your Client (KYC) norms.

1. Please refer to SEBI circular no. CIR/MIRSD/16/2011 dated August 22, 2011, MIRSD/SE/Cir-21/2011 dated October 5, 2011, on uniform KYC requirements and the list of documents admissible as Proof of Address.
2. In consultation with Unique Identification Authority of India (UIDAI), Government of India, it has now been decided that the Aadhaar Letter issued by UIDAI shall be admissible as Proof of Address in addition to its presently being recognized as Proof of Identity.
3. In partial modification, in point 9. d of SEBI Circular No. CIR/MIRSD/16/2011 dated August 22, 2011, the date shall be read as 'January 31, 2000' instead of 'January 3, 2000' and in point 4 of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011, the date shall be read as 'February 1, 2012' instead of 'February 1, 2011'.
4. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

Yours faithfully,

A. S. Mithwani
Deputy General Manager
022-26449613
Email: aliasgarm@sebi.gov.in

10

ANNEX-A/2



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CIRCULAR

CIR/MIRSD/ 09/ 2013

October 8, 2013

1. All Recognized Stock Exchanges
2. Stock Brokers through Recognized Stock Exchanges
3. Depository Participants through Depositories
4. Association of Mutual Funds in India
5. Mutual funds through AMFI
6. Portfolio Managers
7. KYC Registration Agencies (KRAs)
8. Alternative Investment Funds (AIFs)
9. Collective Investment Schemes (CIS)
10. Custodians

Dear Sir/ Madam,

Sub: Know Your Client Requirements

1. Please refer to SEBI circular No. CIR/MIRSD/ 09 /2012 dated August 13, 2012, advising that Aadhaar Letter issued by UIDAI would be admissible as Proof of Address in addition to it being recognized as Proof of Identity.
2. In consultation with Unique Identification Authority of India (UIDAI) and the market participants, it has now been decided to accept e-KYC service launched by UIDAI also, as a valid process for KYC verification. The information containing relevant client details and photograph made available from UIDAI as a result of e-KYC process shall be treated as sufficient proof of Identity and Address of the client. However, the client shall have to authorize the intermediary to access his data through UIDAI system.
3. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

Yours faithfully,

A. S. Mithwani
Deputy General Manager
022-26449613
Email: aliasgarm@sebi.gov.in